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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,526	09/29/2003	James Darrin Davis	356	1191
32823	7590	12/20/2005	EXAMINER	
DON W. WEBER 20-A EDWARDSVILLE PROFESSIONAL PARK EDWARDSVILLE, IL 62025			ADAMS, GREGORY W	
			ART UNIT	PAPER NUMBER
			3652	
DATE MAILED: 12/20/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/672,526	DAVIS, JAMES DARRIN
	Examiner Gregory W. Adams	Art Unit 3652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 12 September 2005.  
 2a) This action is **FINAL**.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1 is/are pending in the application.  
 4a) Of the above claim(s) 2 and 3 is/are withdrawn from consideration.  
 5) Claim(s)       is/are allowed.  
 6) Claim(s) 1 is/are rejected.  
 7) Claim(s)       is/are objected to.  
 8) Claim(s)       are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on       is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No.      .  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date <u>     </u>
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>     </u>	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: <u>     </u>

**DETAILED ACTION*****Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al.(US 2002/0168257) in view of Walton (US 5,882,170). Smith et al. discloses a deer-stand carrier rack comprising an attaching frame 10 (or 12), having movable attaching bars 17 (or 22), deer support frame axle end (indicated generally as 12 or 22), deer support outer end rotatably attached to attaching frame lower part, support frame left and right dog leg rods (indicated generally as 18) hingedly attached to a bottom axle (indicated generally as 22), and support frame left and right wing pieces 18, 18 attached to support frame left and right dog legs. It is noted that Smith's bars 17 move when winch 14 lifts rack 10 into a vertical position. It is also noted that a recitation of the intended use of the claimed invention, e.g. mounting to an ATV front or rear, must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In this case, connecting to an ATV front as recited by Applicant results in no structural differences from the cited prior art.

Smith discloses attaching a deer-carrier rack to an ATV rear, and does not disclose attaching with U-clamps. Walton teaches that when attaching add-on racks to

vehicles its common to replace fastening means such as welding with "bolts, rivets, U-clamps and the like." Cols. 1-2. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to fasten Smith's rack with U-clamps, as per the teachings of Walton, as is commonly known as a connecting means for add-on racks.

#### ***Response to Arguments***

Applicant's arguments filed September 12, 2005 have been fully considered but they are not persuasive.

In response to Applicant's arguments that Smith is a rear mounted rack, Applicant has too narrowly construed the breadth of the Smith reference as well as constructed an intended use argument. First, Smith recites a deer rack with the features as noted above under 103(a) rejections. The fact that it ultimately will be mounted to an ATV front or rear is not the issue. Smith merely offers a deer rack that could be mounted to an ATV. For example, if you had an ATV with the appropriate mounting structure, Smith's deer rack could be mounted on the front. Second, Applicant's attempt to narrow the claims through arguing a front v. rear mounting configuration is intended use. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

In the alternative, Applicant's figures depict mounting to an ATV rack wherein there is nothing to prevent a user from mounting its ATV rack on an ATV rear. In this case, Smith in view of Walton embodies all the claims and limitations in amended claim

1. If Applicant has a specific attachment it requires it is suggested to provide the structure which would define over the prior art, e.g. a particular mounting bracket or hitch.

Applicant also argues the references cited in form 892 mailed July 29, 2005. The Examiner appreciates the Applicant's thoroughness, but these arguments address art not used in the Non-Final Office Action on the merits. Thus, they will not be addressed.

### ***Conclusion***

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

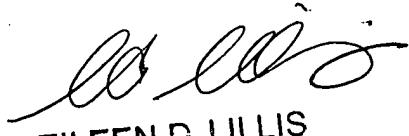
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory W. Adams whose telephone number is (571) 272-8101. The examiner can normally be reached on M-Th, 8:30-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen Lillis can be reached on (571) 272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

GWA



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